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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS EDWARD KELLEY,

Defendant and Appellant.

C057716

(Super. Ct. Nos.  
07F08108, 07F10151)

Convicted of petty theft with priors (case No. 07F10151), defendant Thomas Edward Kelley appeals claiming the trial court erred in including fines and fees in the sentencing minutes and abstract of judgment that were not orally pronounced by the court in defendant's presence. The People concede the error and seek remand. The record establishes the following:

In September 2007, defendant pled no contest to possession of cocaine base (Health & Saf. Code, § 11350, subd. (a)) and was sentenced to 16 months in state prison, execution of which was suspended pending his completion of Proposition 36 probation in

case No. 07F08108. The only fines and fees imposed by the court on the record were a restitution fine of \$200 and "a second \$200 restitution fine," to be stayed pending defendant's successful completion of probation.

The minute order for defendant's September 27, 2007 sentencing hearing was not filed until October 18, 2007. That minute order imposed numerous fines and fees not orally pronounced by the court including a \$100 drug treatment placement program fee, a laboratory fee plus penalties, a drug program fee plus penalties, and a \$1,000 fine pursuant to section 11350 of the Health and Safety Code.

Then, on November 6, 2007, defendant pled no contest to petty theft with a prior conviction (§ 666) and was sentenced on a new case, case No. 07F10151. At that time, the trial court ordered defendant to pay a restitution fine of \$200 and an additional restitution fine of \$200 pending successful completion of parole. The defendant also was ordered to pay a main jail booking fee of \$242.29. The trial court then said, "All other fees are waived."

The trial court did not mention any other fines or fees, including those contained in the October 18, 2007 minute order. Nevertheless, the court's minute order, filed November 6, 2007, states, "Deft to pay any balance owing on fee/fines prev. imposed on 9/27/07: \$200 rest fine + \$200 rest fine stayed, \$50 criminal lab fee, \$150 drug program fee, \$20 court security fee, \$242.29 main jail booking fee, \$27.22 main jail classification

fee." None of these additional fines and fees were ever imposed on the record by the court.

Consequently, we accept the People's concession that in the drug case, No. 07F08108, the court clerk twice wrongly inserted additional fines and fees in written minute orders in contravention of this court's ruling in *People v. Zackery* (2007) 147 Cal.App.4th 380, and remand for resentencing.

#### **DISPOSITION**

Defendant's sentence in case No. 07F08108 is vacated and the matter is remanded for the limited purposes of resentencing in accordance with this opinion and the procedures set forth in *People v. Zackery, supra*, 147 Cal.App.4th 380. After defendant is resentenced, the trial court is directed to prepare an amended abstract of judgment and forward a certified copy of the same to the Department of Corrections and Rehabilitation.

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CANTIL-SAKAUYE, J.

We concur:

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SIMS, Acting P. J.

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HULL, J.